

these fundamental rules of law were as defective as that made for the latest statute regulating the hours of labor. The effective responsibility for keeping the peace was bestowed upon minor state or county officials who could be persuaded or browbeaten by organized and powerful anti-social forces of all kinds. The consequence was that in Colorado the police power of the state was captured by one of the parties to a bitter industrial dispute, and it was used ruthlessly not merely to suppress violence, but to terrorize the strikers into submission.

EX-Governor Ammon has been criticized because of the use made by the operators of the state militia organization; but, as he testified before the Industrial Commission, he did not have the authority to use it effectively, even if he did have the will. The officials upon whom he had to depend for the enforcement of the laws were independent of him. Colorado, like so many other American states, had considered government by men so dangerous to government by law that it had disintegrated the executive power of the state and left it powerless in the face of grave social disorder. Thus the state government, notwithstanding the fine phrases in its constitution, was made the tool of one party in an economic quarrel. Its moral authority and prestige were exploded with the discharge of the rifles of the gunmen.

It took Federal troops to restore order. A small body of them proved sufficient for the job, and the celerity with which they accomplished it indicates clearly that a strong, impartial and responsible state government might have kept the peace without serious difficulty. That Colorado failed lamentably to do so is a sinister fact. Neither side trusted either in the state's ability or its good faith. Yet there was no sufficient excuse for the absence of either ability or good faith. The disorder prevailed in only a small part of its territory, and concerned only a minor fraction of its population. Its large cities and its considerable agricultural districts were not directly involved. No general insurrection had taken place, such as the framers of the Constitution had in mind when they provided for a possible appeal by the state for Federal military assistance.

Neither does the behavior of the rest of the state during and after the insurrection afford much indication of a power of recuperation. The legislature assembled and adjourned without proving any more equal to the emergency than had been the executive. The recent election resulted in the triumph of "law and order" candidates; but the "law and order" which they are pledged to serve will do nothing to heal wounds, to build up social tissue and to restore the public credit and political integrity

inspire any more confidence than the old. Both the operators and the miners profess to regard the withdrawal of the Federal troops with apprehension. Colorado herself has done nothing to assure the rest of the country that if the troops are withdrawn another unruly emergency will not necessitate their return.

States which have to call upon Federal troops to restore order on the occasion of an ordinary industrial dispute should understand the plain meaning and the inevitable result of their political ineptitude. The power which is actually responsible for the maintenance of public order must in the long run concern itself with the causes of disorder. A state which depends upon the nation to keep the peace within her borders is no longer a really self-governing community. She must expect increasing interference on the part of the nation in what has hitherto been regarded as exclusively a matter of domestic policy. In so far as Federal troops are necessary to restore order in the case of industrial disputes, the adjustment of the relations between strikers and their employers is by way of becoming a national business.

An Unseen Reversal

THE President is expected to appoint the five Trade Commissioners almost any day. He will then have embodied one of the strongest agencies ever created by the Federal Government. For those Commissioners will have it in their power to reverse the traditional American attitude toward big business.

The Sherman act and the decisions under it have reflected loyally the prevailing temper of American political feeling. The spectre of tyranny has always hag-ridden our dreams, and the act was passed to exercise the nightmare of monopolistic control. Unlimited economic power rather than concrete economic evils, was the inspiration of the act and of the spirit of its interpretation. The Supreme Court in consequence has many times said that it was the mere power to monopolize supply or control prices that counted, not its exercise; and that the Court would not look at the practical results of the combination when once it was clear that its purpose was to create an effective control. There are perhaps signs of a different temper, but the classic tradition is still strong, and at best it is no better than an even chance that the court will reverse the Harvester case, which is an extreme test of the doctrine. Our American dread of absolutism has hitherto made the mere existence of monopoly appear to be an insidious cancer of the state; to tolerate its least symptom was treason.

different approach, a spirit strangely contradictory to the campaign theories of the President. It will focus attention not on possibilities, but on performance, not on monopoly, but upon unfair trade methods. Such changes in point of view tell more in the end than anything else, for men easily forget when they do not constantly attend, and a system which always looks at specific instances of misconduct quickly becomes uninterested in abstract questions of economic power.

The first and most important feature of the Trade Commission act is its clear recognition that this is the proper mental attitude toward the trust question. It is not the attitude anyone could have expected to see emerge from the tradition of the Democratic party. But nevertheless it did. A Democratic Congress has actually delegated the broadest kind of personal discretion to a commission of "experts," a commission, mind you, which combines executive, legislative, and judicial functions. Could there be anything more portentous to those who believe in the adequacy of the Logos, as it comes to us from the Fathers; could there be a more impious attack upon the triune separation of powers? The act achieves a very happy but a most amazing delegation of legislative function.

It contains no guide for the limiting of the powers of the Commission and the courts but their general judgment of what is fair in the given case. "Do you think these practices serve the public interests or do you not? You must go over each case and look at the whole problem; there are no major premises for your guidance; yours is the responsibility for a right decision and yours the power; make your own rules for trade, but at your peril make them right." That is in substance the charter of these five Trade Commissioners, and the wonder is that so few have felt it to be a departure from American ideas. The Interstate Commerce Commission and the State Public Service Commissions must indeed have carried us far already. This is fast becoming a government not of laws, but of men, perhaps really a government, after all, no longer a pious treasury of past generalizations.

The procedural features of the scheme are important. At present a small trader with a grievance appeals to the Attorney-General, and if that officer chooses to embark in a dissolution suit, he files a bill and several years are spent in taking testimony. Finally the case comes to a hearing, generally before three of four judges, in from four to twenty large volumes of undigested and unarranged evidence, largely irrelevant. The court, already crowded with constantly growing business, as all Federal Courts are now being

the disputed facts. Then they must face the question of the pertinency under the law of what they can gather from the conflicting assertions of counsel. This new act, on the other hand, provides that the Commission must initiate proceedings, take the proof and find the facts. These findings are conclusive. Upon these facts, which it will be extremely important to have stated separately and clearly, the Commissioners will decide whether or not the defendant has engaged in unfair trade methods; if they decide that the methods are fair, the suit is nearly certain to end. The Attorney-General may begin a dissolution suit *de novo*, if he has the heart to undertake it, though he will not have, and the aggrieved individual may sue for treble damages if he can afford it, and he seldom can. Practically, the matter will stop with the Commissioners' decision. If the Commission finds on the other hand that there has been unfair trade, the defendant may appeal direct to the Appellate Court, which, taking the facts as found, has in turn its own hands free to determine what it regards as unfair trade, laying down the rule for that case and looking only to its sense of the public interest. Thus is preserved the necessary final judgment of a tribunal which has had nothing to do with the prosecution.

In this Trade Commission act is contained the possibility of a radical reversal of many American notions about trusts, legislative power, and legal procedure. It may amount to historic political and constitutional reform. It seems to contradict every principle of the party which enacted it. It seems to strike at the root of ancient American prejudice. But the opposition has been negligible, so negligible that it stirs a little wonder as to whether Congress and the press realized that the quiet phrasing and ingenuity of this bill were another Trojan horse.

The Shipping Note

OUR note to Great Britain in regard to shipping is a frank and self-respecting performance. A reading of the full text, moreover, must dispel the first impression conveyed by the summary somewhat prematurely given to the newspapers. It seemed at first that this government had acted with curt exasperation and a peremptory desire to have the letter of the law. No sense of this is to be found in the note itself. As state documents go, it is peculiarly lucid, open, and plausible, and no fairminded Englishman should find in it anything to jar his good feeling toward this country.

In substance it is more than justified in fact and in law. There can be little question that England